

The City Council of the City of Newton held a regular meeting at 7:30 PM on Wednesday, June 23, 2004 at City Hall with the following present: Mayor Robert Mullinax, Council Members Wayne Dellinger, Al Gaither, Tom Dixon, Tom Rowe, Anne Stedman, Roy Johnson, City Manager Edward Burchins, City Attorney Larry Pitts, Assistant City Manager Glenn Pattishall and City Clerk Rita Williams.

ITEM 1 - CALL TO ORDER.

Mayor Mullinax called the meeting to order and welcomed citizens in the audience.

ITEM 2 - OPENING.

Council Member Dixon led the Pledge of Allegiance.

ITEM 3 - APPROVAL OF MINUTES OF THE JUNE 1, 2004 BUDGET WORK SESSION AND JUNE 1, 2004 REGULAR MEETING.

A motion was made by Council Member Johnson, seconded by Mayor Pro Tem Rowe, and unanimously adopted that the minutes of the June 1, 2004 budget work session and June 1, 2004 regular meeting be approved as submitted.

ITEM 4 - CONSIDERATION OF APPROVAL OF CONSENT AGENDA ITEMS.

A motion was made by Council Member Johnson, seconded by Council Member Stedman, and unanimously adopted that the following items on the Consent Agenda be approved as submitted:

A. Tax releases. (approved)

<u>Year</u>	<u>Rel. #</u>	<u>Name</u>	<u>Reason</u>	<u>Amount</u>
2003	48	J & J of NC, LLC DBA E-Z Way Food Store	Clerical error, carried forward in error	\$144.19
2001	49	Alvin K./Patricia A. Phillips	Sold property prior to January 1, 2004	\$ 2.59

B. Consideration of initiating court proceedings on Katy H. Setzer, Heirs nuisance violation. (adopted)

RESOLUTION #21-2004  
RESOLUTION OF THE CITY COUNCIL  
OF THE CITY OF NEWTON

CONCERNING:

OWNER/OCCUPANT/TENANT: Katy H. Setzer Heirs  
OWNER'S ADDRESS: C/O Sharon Shuffler 5619 Bee Tree Ave., Morganton, NC 28655  
PROPERTY ADDRESS: 200 West 28<sup>th</sup> St., Newton, NC 28658  
TAX MAP REFERENCE: MAP 11C, BLOCK 10 LOT 10 (COUNTY Catawba)  
PIN: 3741 13 04 5709

BEING A RESOLUTION directing the City Attorney for the City of Newton pursuant to Chapter 16 Nuisances of the City of Newton Code to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by Chapter 16, Sections 16-4 Nuisance of the City Code; and

WHEREAS, the City Council of the City of Newton finds that the property herein described is a safety and health hazard to the public under the provisions of the

Nuisance Code and that the provisions of said Code have been complied with as a condition to the adoption of this resolution; and

WHEREAS, the owner of said property has failed and refused to comply with a lawful order of the Code Enforcement Officer to remove the same to meet the requirements of Nuisances Code within the time period prescribed;

NOW, THEREFORE; be it resolved by the City Council of the City of Newton that the City Attorney for the City of Newton pursuant to Chapter 16, Sections 16-4 Code of the City be authorized and directed to petition the Superior Court of the General Court of Justice of the State of North Carolina for an order directing such owner named herein to comply with Order of the Code Enforcement Officer as authorized by the North Carolina General Statutes, said Order of the Code Enforcement Officer being dated June 14, 2004 and incorporated by reference into this Resolution.

ADOPTED THIS 23RD DAY OF JUNE, 2004.

ROBERT A. MULLINAX, MAYOR

ATTEST:

RITA K. WILLIAMS, CITY CLERK

C. Consideration of approval of Cooperative Bid Agreement with ElectriCities (for joint purchasing of utility materials, supplies and equipment). approved

D. Consideration of acceptance of Startown Pump Station. (adopted)

ORDINANCE #2004.28 ATTACHED

E. Consideration of allocating funding for moving and storing of generator. (adopted)

ORDINANCE #2004.29 ATTACHED

ITEM 5 - PUBLIC HEARINGS:

A. Consideration of agreement for refinancing existing long term debt on vehicles and equipment.

The Mayor announced that this was the hour and day of the public hearing on a proposed installment financing to be entered into by the City pursuant to Section 160A-20 of the General Statutes of North Carolina for the purpose of providing funds to refinance two existing installment financing agreements pursuant to which the City financed the cost of various improvements and equipment for the City's utilities systems. Such installment financing would be secured by a lien on, or security interest in, all or a portion of the improvements and equipment being refinanced.

The Mayor acknowledged due publication of the notice of public hearing in a newspaper with a general circulation in said City as required by Section 160A-20(g) of the General Statutes of North Carolina and directed the City Clerk to attach the affidavit showing publication in said paper on a date at least ten days prior to the date hereof as Exhibit A hereto.

Finance Director Baker reported that on June 4, 2004, the City solicited bids for the refinancing of outstanding contracts. Eight RFP's were submitted to financial institutions and bids were opened on June 9th. He said of the eight financial institutions, only three responded and one of them could not be evaluated on the bid specs provided so it was not considered. He reviewed the bids received from BB&T/Craigie Governmental Finance and Wachovia Bank for seven year, eight year, ten year, and fourteen year interest rates. He said it was the staff's recommendation that the City Council award BB&T Governmental Finance the bid to provide the requested funding.

There was considerable Council discussion regarding the refinancing and Council Member Dellinger voiced his concern that the City would be adding \$800,000 in interest by extending the payment time on vehicles and equipment purchased.

Finance Director Baker stated that the City would pay more interest by extending the loan period but it would have additional cash flow and money to fund needed projects such as extending water and sewer service to areas which do not have them. Each Council member voiced their opinion and the majority was in favor of handling the City's debt by the refinancing method recommended by the City staff.

The Mayor then announced that the City Council would immediately hear anyone who might wish to be heard on advisability of the proposed refinancing as so described and no one appeared to speak. He closed the public hearing and called the Council meeting back into session.

Thereupon, Council Member Dixon introduced the following resolution the title of which was read and copies of which had been distributed to each Council Member:

RESOLUTION #22-2004

RESOLUTION ACCEPTING THE PROPOSAL OF BB&T GOVERNMENTAL FINANCE IN CONNECTION WITH THE REFINANCING OF PRIOR INSTALLMENT FINANCING AGREEMENTS

WHEREAS, the City of Newton, North Carolina (the "City") intends to enter into one or more installment financing agreements pursuant to Section 160A-20 of the General Statutes of North Carolina for the purpose of refinancing two existing installment financing agreements that were entered into by the City for the purpose of financing the cost of various improvements and equipment for the City's utilities systems; and

WHEREAS, the City has solicited proposals from various banks to provide the financing for such acquisition of equipment; and

WHEREAS, upon careful review and consideration of the proposals submitted by banks to provide such financing, the City desires to accept the proposal of BB&T Governmental Finance;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newton, North Carolina (the "City Council") as follows:

1. The proposal of BB&T Governmental Finance to provide financing through one or more installment financing agreements in an aggregate principal amount not to exceed \$4,500,000 for the purpose of providing funds to refinance two existing installment financing agreements as described above is hereby accepted, subject to further approval of the particular documentation related thereto by the City Council.

2. The City Manager and the Finance Director of the City are hereby authorized and directed to execute and deliver such documentation as may be necessary to accept the proposal of BB&T Governmental Finance.

3. This resolution shall take effect immediately upon its passage.

Upon motion of Council Member Johnson, seconded by Council Member Rowe, the foregoing resolution entitled "RESOLUTION ACCEPTING THE PROPOSAL OF BB&T GOVERNMENTAL FINANCE IN CONNECTION WITH THE REFINANCING OF PRIOR INSTALLMENT FINANCING AGREEMENTS" was passed by the following vote:

Ayes: Council Members Anne Stedman, Al Gaither, Tom Rowe, Thomas A. Dixon and Roy Johnson

Noes: Council Member Wayne Dellinger

\* \* \* \* \*

I, Rita K. Williams, City Clerk of the City of Newton, North Carolina, DO HEREBY CERTIFY that the foregoing is a true copy of so much of the proceedings of the City Council of said City, at a regular meeting held on June 23, 2004, as it relates in any way to the passage of a resolution relating to an installment financing for the refinancing of two existing installment financing agreements and that said proceedings are recorded in the minutes of said City Council.

I DO HEREBY FURTHER CERTIFY that a schedule of the regular meetings of said City Council, stating that the regular meetings of said City Council are held on the first Tuesday and the third Wednesday of each month at 7:00 p.m. at the City Hall in Newton, North Carolina, has been on file with me for at least seven calendar days prior to said meeting, all in accordance with G.S. §143-318.12.

WITNESS my hand and official seal of said City this 23rd day of June, 2004.

Rita K. Williams, City Clerk

A motion was made by Council Member Johnson, seconded by Council Member Stedman, unanimously adopting a resolution approving the following financing terms:

#### RESOLUTION #23-2004

#### Resolution Approving Financing Terms

WHEREAS, The City of Newton ("City") has previously determined to undertake a project for eight items listed on the proposal and the Finance Officer has now presented a proposal for the financing of such Project;

BE IT THEREFORE RESOLVED, as follows:

1. The City hereby determines to finance the Project through Branch Banking and Trust Company ("BB&T"), in accordance with the proposal dated June 9, 2004. The amount financed shall not exceed \$6,705,000.00, the annual interest rate (in the absence of default or change in tax status) shall not exceed the following rates : 3.69%, 3.79%, 3.97%, 4.13%, and the financing term shall not exceed the following terms: 7 years, 8years, 10 years and 14 years from closing.

2. All financing contracts and all related documents for the closing of the financing (the Financing Documents") shall be consistent with the foregoing terms. All officers and employees of the City are hereby authorized and directed to execute and deliver any Financing Documents, and to take all such further action as they may consider necessary or desirable, to carry out the financing of the Project as contemplated by the proposal and this resolution. The Financing Documents shall include a Financing Agreement and a Project Fund Escrow Agreement as BB&T may request.

3. The Finance Officer is hereby authorized and directed to hold executed copies of the Financing Documents until the conditions for the delivery of the Financing Documents have been completed to such officer's satisfaction. The Finance Officer is authorized to approve changes to any Financing Documents previously signed by City officers or employees, provided that such changes shall not substantially alter the intent of such documents or certificates from the intent expressed in the forms executed by such officers. The Financing Documents shall be in such final forms as the Finance Officer shall approve, with the Finance Officer's release of any Financing Document for delivery constituting conclusive evidence of such officer's final approval of the Document's final form.

4. The City shall not take or omit to take any action taking or omission of which shall cause its interest payments on this financing to be includable in the gross income for federal income tax purposes of the registered owners of the interest payment obligations. The City hereby designates its obligations to make principal and interest payments under the Financing Documents as "qualified tax-exempt obligations" for the purpose of Internal Revenue Code Section 265(b)(3).

5. All prior actions of City officers in furtherance of the purposes of this resolution are hereby ratified, approved and confirmed. All other resolutions (or parts thereof) in conflict with this resolution are hereby repealed, to the extent of the conflict. This resolution shall take effect immediately.

Approved this 23<sup>rd</sup> day of June, 2004.

Robert A. Mullinax, Mayor

Attest:

Rita K. Williams, City Clerk

Council Member Dixon reported that at a recent meeting, he suggested to the City staff that they look at making monthly or quarterly payments instead of annual payments on debt. He said that the City can save \$9,266 per year over an eight year period by making quarterly instead of annual payments.

After discussion, Council Member Dixon moved that the loan be set up on quarterly payments. The motion died from lack of a second.

A motion was made by Council Member Johnson, seconded by Council Member Rowe, that the loan be set up on annual payments. Council Members Johnson, Rowe, Stedman, Dellinger and Gaither voted for the motion. Council Member Dixon voted against it. The motion carried five to one.

Finance Director Baker stated that in the future the City will change the way it has historically borrowed money.

B. Consideration of text amendment #2004-06 Sports and Entertainment facility.

Mayor Mullinax recessed the Council meeting and called to order a public hearing, as previously scheduled and advertised, to consider proposed text amendment #2004-06.

Assistant City Manager Pattishall reported that Mr. Ken Johnson, representing SK8, made a presentation to the Planning Commission at its April 27, 2004 meeting stating that his group of investors was considering purchasing property located off of Hughey Drive near US Hwy. 70 and the Fairgrounds for the location of a new ice dome. Mr. Johnson indicated they were considering the purchase of property owned by Mr. William Burton located off of Hughey Drive and that the property was in a M-1 Zoning district which did not allow the type of business he wanted to construct. He requested the Planning Commission consider an amendment to the Zoning Ordinance that would allow these types of facilities in M-1 districts.

Mr. Pattishall stated the Planning Commission developed a proposed text amendment and held a public hearing on the amendment at its May 25, 2004 meeting. At that time, the Planning Commission recommended the text amendment be recommended to the City Council for approval.

Mr. Pattishall reviewed the proposed text amendment which defines Sports and Entertainment Facilities and lists them as a Class B Special Use permit to be approved by the Board of Adjustment in all M-1 zoning districts. The ordinance further indicates specific standards that these types of facilities would have to meet such as being on a minimum 10-acre site. It also requires that the site be

served with municipal water and sewer, access directly to an arterial street or a street that connects directly to an arterial street but not constituting a local residential street, buffers and screening to be provided as for Group 3 uses. Parking is determined in accordance with the parking standards of the City Code for these type facilities. Mr. Pattishall stated that the proposed text amendment would apply to all M-1 zoning districts, regardless of this project.

Mr. Pattishall advised the Council that the Burton site was no longer being considered according to Mr. Johnson who advised the Planning Commission at its May meeting. He stated that he recommended the Council consider allowing facilities in PD-IP and PD-MU zoning districts as well since there was a distinct possibility that these were the zoning districts where such facilities might be located in the near future.

Mayor Mullinax asked if there was anyone in the audience who wanted to speak regarding the proposed text amendment and no one appeared to speak. He closed the public hearing and called the Council meeting back into session.

After Council discussion regarding the 10-acre site requirement, a motion was made by Council Member Gaither, seconded by Council Member Rowe, and unanimously adopted that the text amendment be approved as recommended by the Planning Commission.

#### ORDINANCE #2004.30 ATTACHED

#### ITEM 6 - OLD BUSINESS:

##### A. Consideration of adoption of FY 2004-05 budget.

City Manager Burchins reported that the Council and City staff held five meetings on the budget, reviewed a proposed manual of fees and charges and reviewed proposed utility rate increases. After Council discussion at the last meeting, Mr. Burchins stated that the staff went back to look at the proposed budget to see if there were areas where additional funds could be cut and maintain and protect the high level of services the city offers, maintain fair utility rates and continue to protect the financial integrity of the City. He said the budget originally called for a monthly \$1.00 increase for water, \$1.00 for sewer and \$1.00 for electric utility service charges and he was recommending the fees be decreased to \$.50 each per month for water and sewer and the proposed \$1.00 electric service fee be eliminated. Therefore, the utility service fees will increase \$12.00 per year instead of \$36.00 as originally proposed. He said a 2% electric rate increase was proposed and the budget includes the \$.65 cents tipping fee increase as proposed. Additionally, it was recommended the other user fee adjustments remain the same with the exception of those amended by the City Council. Those were: cemetery fees, fire inspection fees and land clearing fees.

He said the staff also made the following reductions: removed the Pay and Position Classification Plan (\$25,000), removal of environmental attorney fees in the Administration Department and funds for technology improvements in the Finance Department and indirect transfers between funds were reduced. He said the total reductions of \$182,250 would reduce the proposed budget from \$27,830,750 to \$27,648,500.

A motion was made by Council Member Johnson, seconded by Council Member Dixon, and unanimously adopted to approve the 2004-05 budget with the outlined reductions and to approve the fees and charges manual.

#### ORDINANCE #2004.31 ATTACHED

#### ITEM 7 - NEW BUSINESS:

A. Consideration of request of Paul Walker of Walker's Pharmacy to designate the alley (going north between "A" Street and 1st Street located behind Walker's Pharmacy) as one-way traffic.

Council Member Gaither requested he be excused from discussion on this matter since he was indirectly involved in it and the Council agreed.

City Manager Burchins reported that Mr. Walker has requested the alley located behind his business be designated as one-way going north between "A" Street and 1st Street to allow him a customer drive-up window at the back of his drugstore.

The Council agreed to consider his request and Council Member Dixon suggested the staff poll all property owners to get their opinions about the request for one-way traffic in the alley. The Council agreed to consider the matter at the July 14th meeting.

B. Discussion regarding failure to comply with City Codes - Court Street Commons Development.

City Manager Burchins reviewed information contained in the agenda packet regarding issues at the Court Street Commons Subdivision. He reviewed letters and attempts by the staff to contact Mr. Cole Gaither regarding the following needed corrections to the subdivision:

1. Stabilize all banks and slopes throughout the subdivision.
2. Push in sediment basins north and south of Lawyers Lane.
3. Mow all over grown lots now and once per month during the season.
4. Will remove sight obstructions at entrance from Radio Station Road - west side.

Mr. Burchins also stated that the City staff has had complaints from citizens living in the subdivision.

Mr. John Holland, who is a resident of Court Street Commons, outlined a considerable list of problems which need to be addressed by Mr. Gaither. He said that Mr. Gaither has repeatedly promised them he would take care of the problems but he has not.

After considerable Council discussion, the Council agreed to give Mr. Gaither until July 14th to correct the problems and the Council will consider the matter at that time.

ITEM 8 - CITY MANAGER'S REPORT. NONE

ITEM 9 - QUESTIONS FROM MAYOR AND COUNCIL. NONE

ITEM 10 - CLOSED SESSION TO DISCUSS LOCATION/EXPANSION OF BUSINESS OR INDUSTRY - G. S. 143-318.11(a)(4) AND TO CONSULT WITH THE CITY ATTORNEY ON A CONTRACTUAL MATTER - G.S. 143.318.11(a)(3).

A motion was made by Council Member Rowe, seconded by Council Member Johnson, and unanimously adopted for the Council to go into Closed Session to discuss location/expansion of business or industry and to consult with the City Attorney on a contractual matter.

After the Closed Session, Mayor Mullinax called the meeting back into session and stated no action was to be taken at this time. There being no further business, the meeting was adjourned.

Respectfully submitted,

Robert A. Mullinax, Mayor

Rita K. Williams, City Clerk